

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: John Hanley	Team: Squad #1	CCRB Case #: 201707791	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 09/13/2017 3:15 AM	Location of Incident: Pelham Bay Park 6 train subway station.	Precinct: 45	18 Mo. SOL 3/13/2019	EO SOL 3/13/2019	
Date/Time CV Reported Wed, 09/13/2017 6:45 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 09/21/2017 2:29 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Lenzell Ross	22663	962759	TB DT12
2. An officer			TB DT12
3. SGT Awaz Raphique	02666	937840	TB DT12
4. SGT Jose Bonilla	4706	940973	TB DT12

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Maoda Lin	01872	959758	TB DT12
2. SGT Michelly Rosario	01778	928711	045 PCT
3. POM Earl Quinones	21340	942392	045 PCT
4. POM Zef Camaj	01460	956480	TB DT12

Officer(s)	Allegation	Investigator Recommendation
A.POM Lenzell Ross	Force: PO Lenzell Ross used physical force against § 87(2)(b)	
B.POM Lenzell Ross	Abuse: PO Lenzell Ross threatened to arrest § 87(2)(b)	
C.SGT Awaz Raphique	Abuse: Sgt. Awaz Raphique forcibly removed § 87(2)(b) to the hospital.	
D. An officer	Abuse: An officer searched § 87(2)(b)'s bag.	
§ 87(4-b), § 87(2)(g)		

Case Summary

On September 13, 2017, § 87(2)(b) filed this complaint with IAB via telephone. It was referred to the CCRB via IAB log# 17-36306 and received on September 21, 2017.

On September 13, 2017, at approximately 3:15 AM, at the above ground Pelham Bay Park 6 train subway station in the Bronx, PO Lenzell Ross of Transit District 12 allegedly used physical force against § 87(2)(b) (**Allegation A: Force:** § 87(2)(g) PO Ross threatened to arrest § 87(2)(b) (**Allegations B: Abuse of Authority,** § 87(2)(g) Sgt. Awaz Raphique of Transit District 12 forcibly removed § 87(2)(b) to the hospital (**Allegation C: Abuse of Authority,** § 87(2)(g) An officer allegedly searched § 87(2)(b) s bag (**Allegation D: Abuse of Authority,** § 87(2)(g)). § 87(2)(g), § 87(4-b)

Footage from MTA surveillance cameras was obtained by the investigation but did not capture the incident (see Board Review 35) § 87(2)(g)

Findings and Recommendations

Allegation (A) Force: PO Lenzell Ross used physical force against § 87(2)(b)

It is undisputed that on September 13, 2017, PO Ross and PO Lin approached § 87(2)(b) and ejected her from the train station. § 87(2)(b) was intoxicated at the time.

§ 87(2)(b) stated that she fell asleep on the 6 train (See Board Review 02). She woke up after PO Ross and his partner, PO Maoda Lin approached her and PO Ross tapped her and told her to wake up. § 87(2)(b) woke up and got off the train. Realizing that she needed to go back downtown to Brooklyn, § 87(2)(b) got back on the train. PO Ross instructed her to get off the train. PO Ross grabbed § 87(2)(b) by the front of her hooded sweatshirt and pulled her out of the train. Once they reached the turnstiles, PO Ross pulled § 87(2)(b) s hands behind her back but she moved her arms away and prevented him from handcuffing her. PO Ross then took § 87(2)(b) to the ground. § 87(2)(b) s face made contact with the ground. § 87(2)(b) received a cut on her lip due to the take down. During her initial phone statement, § 87(2)(b) stated that PO Ross punched her in the face (See Board Review 01). However, during her interview, § 87(2)(b) clarified that she was not punched by PO Ross but obtained the injury solely when she was taken to the ground. § 87(2)(b) provided cell phone photos of her injury during her interview statement (see Board Review 11-14).

In § 87(2)(b) s call to 911, she informs the 911 operator that “Officers “busted (her) lip.” However, she does not state how this happened (see Board Review 15 for audio, Board Review 17 for summary).

§ 87(2)(b) observed officers walk § 87(2)(b) down the stairs towards an exit but did not see officers make physical contact with her (see Board Review 03). § 87(2)(b) never saw § 87(2)(b) on the ground.

PO Ross stated that he and PO Lin were conducting a train patrol for sleeping passengers on the 6 train where he observed § 87(2)(b) asleep on the bench in a train car with her phone out (see Board Review 07). PO Lin tapped a pole with his asp to wake up § 87(2)(b) and instructed her

to put her phone away to prevent theft. § 87(2)(b) awoke, sucked her teeth, and exited the train car. As PO Ross and PO Lin returned from their patrol, he observed § 87(2)(b) standing on the platform. § 87(2)(b) was pacing back and forth and then advanced towards the officers, shouting “Don’t ever come close to me, you don’t know who I am.” PO Ross instructed § 87(2)(b) to leave as she continued to yell. § 87(2)(b) clenched her fists in front of her chest and advanced towards the officers. PO Ross guided § 87(2)(b) by the elbow with an open palm down the staircase to the mezzanine/turnstile level of the station. § 87(2)(b) moved with the officers although she continued to yell. Once § 87(2)(b) reached the mezzanine level, she stated she was not going anywhere and that she was going to get them fired. § 87(2)(b) did not threaten the officers with physical harm. § 87(2)(b) reached into a large bag she was carrying and PO Lin grabbed the bag. PO Ross grabbed § 87(2)(b) by her upper arms from behind. § 87(2)(b) tried to break away from PO Ross and she and PO Ross tripped on their feet. Both fell to the ground. § 87(2)(b) fell to the ground on her chest and PO Ross landed next to her. PO Ross did not see any physical injuries on § 87(2)(b). PO Ross made no further contact with § 87(2)(b) and PO Lin handed her back her bag. PO Ross did not make any attempt to handcuff § 87(2)(b) during this interaction as his intention was not to arrest § 87(2)(b) but eject her from the station. PO Ross’ memo book entries note the incident, stating § 87(2)(b) claimed injury while being “guided back” away from officers and out of the station but do not note any take down or force used (see Board Review 19).

PO Lin stated that once the officers reached the mezzanine level, § 87(2)(b) began making threats, both to get the officers fired, and to kill them (see Board Review 06). § 87(2)(b) threatened to kill the officers while reaching into her bag. PO Lin grabbed her bag while PO Ross grabbed § 87(2)(b). PO Ross and § 87(2)(b) tripped and fell but PO Lin did not observe how they fell or how § 87(2)(b) landed on the ground. While PO Lin did not observe any injury, he heard § 87(2)(b) complain of an injury to her mouth. PO Lin’s memo book entry notes the incident however does not note any take down or fall to the ground or injury (see Board Review 18).

Sgt. Bonilla, Sgt. Rosario, and Sgt. Raphique arrived after § 87(2)(b) had been escorted out of the train station and did not witness her on the ground. Sgt. Bonilla and Sgt. Raphique did not observe any injuries on § 87(2)(b) nor did she state that officers had used physical force against her (see Board Review 08, 09). § 87(2)(b) informed Sgt. Raphique that she had not been assaulted by officers as she had initially claimed in her 911 call, and he was not informed of any physical interaction by PO Lin or PO Ross. Sgt. Rosario observed blood on § 87(2)(b)’s lip but § 87(2)(b) did not state how she received this injury (see Board Review 10).

EMT § 87(2)(b) and EMT § 87(2)(b) responded to the location and escorted § 87(2)(b) to § 87(2)(b). EMT § 87(2)(b) observed an injury to § 87(2)(b)’s lip (see Board Review 04). § 87(2)(b) stated she received the injury when she fell but EMT § 87(2)(b) did not recall further details. § 87(2)(b) did not state officers took her to the ground. EMT § 87(2)(b) did not hear § 87(2)(b) complain of or observe any physical injury (see Board Review 05).

The TRI reports note no force used against § 87(2)(b), no injuries to § 87(2)(b) and only the checkbox for handcuffs is marked (see Board Review 20, 21 and 22). Narrative in AIDED and TRI reports and supervisor worksheets only note that § 87(2)(b) claimed injuries as a result of

being “guided back” after approaching officers face to face. § 87(2)(b) denied injuries and declined to have Sgt. Raphique take photos of the alleged injury.

According to Patrol Guide Procedure 221-01, members of service should use “only the reasonable force necessary to gain control or custody of a subject” (see Board Review 23).

§ 87(2)(g)

[REDACTED]

Allegation (B) Abuse of Authority: PO Lenzell Ross threatened to arrest § 87(2)(b)

It is undisputed that PO Ross and PO Lin ejected § 87(2)(b) from the train station. After guiding § 87(2)(b) out towards the exit, PO Ross informed § 87(2)(b) that she could leave the train station or be arrested.

PO Ross and PO Lin both stated that § 87(2)(b) could have been arrested for trespassing once she was instructed to leave the station (see Board Review 06-07).

According to NYS Penal Law § 140.05: “A person is guilty of trespass when he knowingly enters or remains unlawfully in or upon premises.” (see Board Review 27)

§ 87(2)(g)

[REDACTED]

Allegation (C) Abuse of Authority: Sgt. Awaz Raphique forcibly removed § 87(2)(b) **to the hospital.**

It is undisputed by all accounts that § 87(2)(b) was intoxicated during the incident. § 87(2)(b) did leave the location for a few minutes after being instructed to by PO Ross. § 87(2)(b) went downstairs to the street level and called 911. § 87(2)(b) informed the operator during her 911 call that she had received injuries and was bleeding as a result of officers hitting her. The operator requested EMS to the location (See Board Review 15 for 911 call audio, Board Review 17 for summary). At some point after this phone call, § 87(2)(b) returned to the train station. At this point, officers did not permit § 87(2)(b) to leave on her own and she was determined to be an

EDP. § 87(2)(b) was removed to § 87(2)(b) from the location, despite her protestations that she wanted to go home. While EMS was initially called due to § 87(2)(b)'s alleging injuries during her 911 call, this was changed to an EDP/intox job. § 87(2)(b) was not treated for any injuries at § 87(2)(b) and released shortly after her arrival.

§ 87(2)(b) stated that she did not remember how much she had to drink prior to getting on the train but she had been drinking from 6 PM on September 12, 2017, to 12 AM or 1 AM on September 13, 2017. § 87(2)(b) admitted that she was intoxicated. § 87(2)(b) stated that she returned to the station in order to retrieve her hat and scarf which had been left in the station by the booth and was not permitted to by officers. EMS arrived and the EMTs explained to her that she had to go to the hospital as per protocol.

EMT § 87(2)(b) stated that she informed § 87(2)(b) that she had to go to the hospital as per protocol (see Board Review 04). EMT § 87(2)(b) stated that EMS protocol does not permit EMTs to leave intoxicated individuals by train platforms as a safety issue. EMT § 87(2)(b) stated the decision to remove § 87(2)(b) to the hospital ultimately fell on EMS.

EMT § 87(2)(b) described § 87(2)(b) as extremely irate, yelling and cursing. EMT § 87(2)(b) determined § 87(2)(b) was intoxicated based on a smell of alcohol (see Board Review 05). EMT § 87(2)(b) was consistent with EMT § 87(2)(b) in stating that EMS protocol precluded them from leaving intoxicated individuals without getting them checked out at a hospital as they would be liable if any injury occurred.

The officers consistently testified that § 87(2)(b) was heavily intoxicated, and that she presented a danger to herself as she returned to the train station after being instructed not to (See Board Review 06-10). § 87(2)(b) was liable to fall onto the train tracks given her condition.

Sgt. Raphique stated when he arrived at the location, he observed § 87(2)(b) either being escorted to the ambulance or already in the ambulance (see Board Review 09). § 87(2)(b) told Sgt. Raphique she did not want to go to the hospital and had no injuries and Sgt. Raphique told her that she could not go home. Sgt. Raphique was informed by EMTs that she needed to go to the hospital and be treated for intoxication. Sgt. Raphique stated the decision to remove § 87(2)(b) to the hospital was made by EMS however. Sgt. Raphique believed § 87(2)(b) was a threat to her own safety based on her level of intoxication.

PO Lin and PO Ross both stated that the decision to have § 87(2)(b) removed to the hospital ultimately fell on Sgt. Raphique (see Board Review 06, 07).

Patrol Guide procedure 221-13 defines an EDP as “A person who appears to be mentally ill, or temporarily deranged and is conducting himself in a manner which a police officer reasonably believes is likely to result in serious injury to himself or others” (see Board Review 24).

§ 87(2)(g)

§ 87(2)(g)

Allegation (D) Abuse of Authority: An officer searched § 87(2)(b)'s bag.

§ 87(2)(g)

It is undisputed that § 87(2)(b) refused to give her name or identification to officers and EMS when requested. Her identification was obtained through a search of her bag. § 87(2)(g) was not under arrest while this search was conducted.

§ 87(2)(b) stated that when she went back up to the station, PO Ross took her bag. § 87(2)(b) never provided her name to officers. However, when she was in the ambulance, PO Lin approached her with her bag and he referred to her by name. As she had not provided her name to the officers, and had identification in her bag, § 87(2)(b) assumed that an officer searched her bag and obtained it there. § 87(2)(b) did not observe this search or know which officer searched the bag (see Board Review 02).

EMT § 87(2)(b) rode in the back of the ambulance with § 87(2)(b) (see Board Review 04). She did not recall how § 87(2)(b)'s identification was obtained. EMT § 87(2)(b) did not recall obtaining the identification herself but she did not recall any officer searching § 87(2)(b)'s bag for identification.

EMT § 87(2)(b) the driver of the ambulance, stated that once § 87(2)(b) was taken to the ambulance, she was uncooperative with EMS, refusing to answer any medical questions (see Board Review 05). EMT § 87(2)(b) did not recall anyone requesting § 87(2)(b)'s identification or her refusing to provide it.

PO Lin stated that when § 87(2)(b) was handcuffed and brought down to the ambulance, a uniformed officer from his command, who he could not identify, brought § 87(2)(b)'s bag down with him (see Board Review 06). § 87(2)(b) refused to provide identification multiple times to officers in the ambulance. The officer holding § 87(2)(b)'s bag handed it PO Lin and Sgt. Raphique directed PO Lin to search the bag for identification and weapons. PO Lin found a piece of paper with § 87(2)(b)'s name and an address in her bag that he used to complete the AIDED card but recovered no weapons. PO Lin stated the reason for the search was primarily in order to obtain identification for the AIDED card. PO Ross did not search the bag.

PO Ross stated that once § 87(2)(b) was escorted to the ambulance, EMTs informed officers that they needed a name to log into their system (see Board Review 07). EMTs requested § 87(2)(b)'s identification and she refused to provide it. Officers also requested her name multiple times and she refused to provide it. Sgt. Raphique directed PO Ross to see if he could find identification in § 87(2)(b)'s bag. PO Ross searched the bag and obtained her license. PO Ross stated he only searched the bag for the identification and once her identification was obtained, PO Ross put the bag by § 87(2)(b). PO Ross denied there was any suspicion of § 87(2)(b) having a weapon in the bag.

Sgt. Raphique stated that § 87(2)(b) did not want to provide identification to EMTs but ultimately provided her name (see Board Review 09). The AIDED report was filled out with pedigree information obtained by EMTs. Sgt. Raphique did not observe any bag with § 87(2)(b) and did not recall directing officers to search through her belongings. Sgt. Raphique did not observe any officer search through § 87(2)(b)'s belongings. IAB Command Center audio of the call placed by Sgt. Raphique is consistent with the narrative Sgt. Raphique provided during his interview (see Board Review 16 for audio, Board Review 17 for summary). Sgt. Raphique informed IAB that the identification was obtained by EMS.

Sgt. Bonilla and Sgt. Rosario both denied asking § 87(2)(b) for identification or hearing officers request her identification. Both denied instructing officers to search for § 87(2)(b)'s identification in her belongings (see Board Review 08 and 10).

According to People v DeBour, 40 N.Y. 2d 210 (1976), a search of person is permissible when reasonable suspicion exists that a person is armed, or probable cause to place a person under arrest (see Board Review 28).

According to Patrol Guide procedure 216-01, when preparing an AIDED report for an unidentified or unconscious person, officers should:

- a. Witness search by hospital authorities and sign hospital property record as witness
- b. Examine property removed in attempt to determine identity of aided" (see Board Review 26).

§ 87(2)(g)

[REDACTED]

[REDACTED]

§ 87(4-b), § 87(2)(g)

[REDACTED]

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first case to which § 87(2)(b) has been a party (see Board Review 34).
- PO Lenzell Ross has been a member-of-service for one year and this is the first CCRB complaint to which he has been a subject (see Board Review 36).
- Sgt. Raphique has been a member-of-service for 12 years and this is the first CCRB complaint to which he has been a subject (see Board Review 37).
- Sgt. Bonilla has been a member-of-service for 12 years and has been a subject in five CCRB complaints and eight allegations, of which one was substantiated (see Board Review 38).
 - 200712883 involved the substantiated allegation of a vehicle search against Sgt. Bonilla. The Board recommended Command Discipline and the NYPD imposed no disciplinary action.

○ § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint
- As of January 30, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to her complaint (see Board Review 33)
- § 87(2)(b), § 87(2)(c)

Squad No.: 1

Investigator: _____

	Signature	Print Title & Name	Date
Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date
Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date